



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

April 25, 2023

BY ECF

The Honorable Richard J. Sullivan
United States Court of Appeals for the Second Circuit
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *United States v. Victor Peterson, 17 Cr. 365 (RJS)*

Dear Judge Sullivan:

The Government submits this letter in advance of the Violation of Supervised Release hearing which is currently scheduled for April 26, 2023. At that hearing, the Government intends to present testimony from Joe Gonzalez, a licensed clinical social worker at Tri Center, Inc. ("Tri Center"). Mr. Gonzalez met with the defendant at substance abuse treatment on April 3, 2023 and initiated the process of discharging the defendant from the Tri Center program thereafter, which forms the basis for Specification Five in Probation's Amended Violation Report dated April 20, 2023. On April 24, 2023, Mr. Gonzalez informed the Government that he tested positive for COVID-19 on April 23, 2023. Nevertheless, Mr. Gonzalez stated that he is amenable to testifying remotely at the upcoming hearing. Because Mr. Gonzalez is unable to appear for the hearing in person, the Government respectfully requests that he be permitted to testify via two-way videoconference. Defense counsel has consented to this request.

The Second Circuit has held that "[u]pon a finding of exceptional circumstances . . . a trial court may allow a witness to testify via two-way closed-circuit television when this satisfies the infest of justice." *U.S. v. Gigante*, 166 F.3d 75, 81 (2d Cir. 1999). In violation of supervised release proceedings, Your Honor has allowed a witness to testify by videoconference when "(1) the witness's testimony is material; (2) the [movant] has made good-faith and reasonable efforts to obtain the witness's presence and is unable to do so (that is, that the witness is unavailable within the meaning of the case law); and (3) allowing testimony by such means furthers the interests of justice." *United States v. Griffin*, No. 11 Cr.936 (RJS), 2021 WL 3188264, at *1 (S.D.N.Y. July 28, 2021). The Government respectfully submits that these factors are satisfied here. The Government expects that Mr. Gonzalez will explain the factors leading to him and another social worker who provided treatment to the defendant discharging the defendant from the treatment program following his refusal to engage meaningfully with treatment. Mr.

Gonzalez's testimony is therefore material to the Court's determination with respect to Specification Five. The Government intended to call Mr. Gonzalez to testify in person before learning of his recent diagnosis. Furthermore, because Mr. Gonzalez will testify to the factors that led to the defendant's discharge from the Tri Center treatment program and the contents of the associated discharge report, his testimony furthers the interest of justice in that (a) his testimony will assist the Court in determining whether the defendant violated the terms of his supervised release as alleged in Specification Five and (b) the defendant will be afforded his Rule 32.1 right to question Mr. Gonzalez.

Because Mr. Gonzalez's appearance by video will advance the Court's fact-finding efforts and because he will be able to be questioned by the defense, the Government respectfully requests that Mr. Gonzalez be permitted to appear by video.

Respectfully submitted,

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For the reasons provided above, the government's request is GRANTED. Given the applicable standards, as set forth in *United States v. Gigante*, 166 F.3d 75, 81-82 (2d Cir. 1999), and with due consideration afforded to the fact that the present proceeding is a revocation proceeding, *United States v. Carthen*, 681 F.3d 94, 99-100 (2d Cir. 2012), IT IS HEREBY ORDERED THAT the government's witness, Mr. Joe Gonzalez, may testify via videoconference at the violation of supervised release hearing scheduled for April 26, 2023.

SO ORDERED.

Dated: April 25, 2023
New York, New York



Hon. Richard J. Sullivan
United States Circuit Judge
Sitting by Designation